

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

AUG 29 2014

Phil Lombardi, Clerk
 U.S. DISTRICT COURT

/s/ Russell (Rusty) E. Mackey
 Plaintiff(s)

vs.

14 CV - 520 GKF - FHM
 Case Number: _____

/s/ Blue Bell Creameries, Inc.
 Defendant(s)

COMPLAINT**A. Parties**

1) Rusty Mackey, is a citizen of Oklahoma
 (Plaintiff) (State)

who presently resides at 11274 South 274th East Avenue, Coweta, OK 74429
 (mailing address if different from residence)

2) Defendant Marty Kilgore is a citizen of Coweta, OK
 (Name of first defendant) (City, State)

and is employed as General Manager
 (Position and title, if any)

3) Defendant Alvin Bailey is a citizen of Broken Arrow, OK
 (Name of second defendant) (City, State)

and is employed as Plant Superintendent
 (Position and title, if any)

[You may attach additional pages (8½" x 11") to furnish the above information for additional defendants.]

B. Jurisdiction

1) Jurisdiction is asserted pursuant to:
the EEOC referred me to Federal Court at 333 West 4th Street, Room 411, Tulsa, OK 74103.

C. Nature of Case

1) Briefly state the background of your case:
Throughout my employment, I was denied a sign language interpreter as a reasonable accommodation because
of my disability for the purposes of meetings and trainings by my Plant Superintendent, Alvin Bailey and Marty
Kilgore, General Manager. Alvin and Marty threatened to send me...(Continued on additional page attached)

D. Cause of Action

I allege the following:

1. I was repeatedly denied a sign language interpreter at meetings and trainings. No visual smoke alarms or

tornado alarms were provided, even though I was told they would be.

Supporting Facts: (Include all facts you consider important, including names of persons involved, places and dates. Describe exactly how each defendant is involved. State the facts clearly in your own words without citing legal authority or argument.)

See attached statement.

2. I was hired as a Freight Operator, but no interpreter was provided for training. I was switched to Packager with a promise that I could work back to my original position. However, no support was given to me and that never happened.

Supporting Facts: (Include all facts you consider important, including names of persons involved, places and dates. Describe exactly how each defendant is involved. State the facts clearly in your own words without citing legal authority or argument.)

See attached statement.

3. I feel that I was treated differently because of my disability. I was threatened and hit - I even filed a police report and no corrective actions were ever taken. Yet, I was reprimanded for small violations, some of which were accidental. I was owed four evaluation increases, and everyone except me received one.

Supporting Facts: (Include all facts you consider important, including names of persons involved, places and dates. Describe exactly how each defendant is involved. State the facts clearly in your own words without citing legal authority or argument.)


See attached statement.

[If necessary, you may attach additional pages (8½" x 11") to explain any allegation or to list additional supporting facts in the same format as above.]

E. Request for Relief

I believe that I am entitled to the following relief:

Four pay increases and back pay that I was not awarded, as well as pay for the week I was suspended. Corrective action against the 4 named employees who discriminated against....(Continued on additional page attached)


 Original Signature of Plaintiff
 11274 South 274th East Avenue
 Current Address
 Coweta, OK 74429
 City State ZIP
 918-994-1122
 Telephone

C. Nature of Case

1) Briefly state the background of your case:

(Continued from Page 1)...home if I didn't communicate with them on paper. I have been physically hit, threatened by coworkers with a knife because of my disability, and no corrective actions were taken after my complaints. I have been suspended and counseled for my coworkers errors without warnings and initial rebuttal by Alvin and Marty, however, coworkers are not reprimanded when they violate policies.

E. Request for Relief

I believe that I am entitled to the following relief:

(Continued from Page 2)...threatened and hit me. Punitive action strong enough to cause the company to provide appropriate access under the ADA to all employees with disabilities, including sign language interpreters when requested. Payment sufficient to cover emotional, mental and physical distress caused by this situation (including visits to doctors). Attorney fees and court costs.

Statement for ADA Complaint against Blue Bell Creameries, Inc.

I, Rusty Mackey, currently work at Blue Bell Creameries, Inc. in Broken Arrow, OK from February 2012 - Present as a Packager. I was originally hired as Freight Operator in February 2012 before I was forced to work as Packager position in April 2013 after I had communication issues with Marty Kilgore, General Manager and Alvin Bailey, Plant Superintendent. I have requested for an interpreter several times but they preferred to write on paper instead of providing an interpreter in all of our meetings.

Recent situations described below has become more clearly that I have been discriminated based on not being able to perform my jobs properly without an interpreter and training instructions provided. It has gotten worse after my wife, Heather Mackey was working as packager has left Blue Bell on June 21, 2013 to go back into her new career in education:

In the last meeting I had with Marty and Alvin in May **without an interpreter provided**, they wanted to review with me periodically to guide me what more they wanted me to improve for 90 days then they would give my freight job back....90 days has passed, it never happen which supposed to be in August. I did not receive my 90 days evaluation until October 6th. Marty gave me hurry up attitude while I tried to communicate. After I attempted to try have him cooperate with me by asking for what's his expectation then he got up and walked off with Alvin. I had no priorities or any expectation from both of them up to when I was given evaluation on October 6th showed that I did not meet any expectation. It is their own fault for not fulfilling their promises to show exactly what they wanted me to do in order to give my original job back. I already have been working equally as how everyone does because I was not properly trained without an interpreter. I really felt that I performed very well as I always have been ever since I started at Blue Bell. I don't understand why they are continuing to treat me differently than others.

October 7, 2013

- **No interpreter provided** for my evaluation given by Alvin, I refused to sign my evaluation because all of the information listed on paper were not accurate and this form was not appropriate for formal evaluation. It was typed on a plain white paper with no date when it was created and did not give me an option to agree or disagree. I saw Alvin threw my formal evaluation in trash can behind his desk instead. When I requested for a copy of the evaluation that I refused to sign, he refused to grant my request unless I sign his paper first. I told him I won't sign it because all of the information were entire opposite of how I performed then I left his office to go back to my line. I have asked all of my team's opinion of my performance so far, they all have said entire opposite of how I was evaluated.

October 8, 2013

- I delivered formal letter¹ to Alvin the next day reason for not signing the evaluation. He gave me rude expression like he did not care and walked off to his office.

October 11, 2013

- **No interpreter provided** for training and tailgate party on this day, I was given the Production Packager Outline² with paper written by Gerald Raym, Production Manager, saying that Alvin is having his own niece, Sheila Richardson, who is one of my teammate on my line that only knows the fingerspellings fairly, to come out of her orientation to interpret on paper then Gerald changed his mind to have Patricia Brittenham who does not know fingerspellings fluently come and interpret instead. I refused to accept that because Patricia has already moved to her new position in Quality Check Lab and is no longer working in Production area I felt that was inappropriate of him pulling her away from her new department to come over for this reason. I told Gerald that I must have an interpreter for this training and that I am not sitting around this long by not being able to know everything. Gerald then sent us both to go down and talk to Alvin about that. Alvin read the note of what I said to Gerald and he got upset and gave rude

¹ Letter to Alvin Bailey.pdf

² 10-11-13 Production Packager Outline.pdf

expression like he scoffed so what. He sent Patricia away then he just walked away into Dry Storage area without telling me what he wanted me to do so I followed him in there and simply asked him what should I do? I need to be in training with everyone. He yelled at me by threatening me to go home but forced me to tear tapes off from stack of boxes³ in corner all alone⁴ while everybody was in training instead. After everybody were finished with training at 11 a.m., we all went outside and had tailgate party⁵ played bunch of activities while on clock and I saw 3 employees are smoking hooka⁶ on company premises illegally in front of every one of us included Marty and Alvin eating lunch. Even in restroom Alvin walked past me by my locker seen Ricky sitting on bench who is one of their maintenance crew smoked e-cigarette reading on his cell phone. I don't understand how Marty and Alvin treated this differently by allowing employees to smoke this way according to company policy that prohibits tobacco usage⁷ on company premises.

October 22, 2013

- **No interpreter provided** for production meeting in the morning, I was not notified anything of this meeting to happen this day until I came up to clock in then was humiliated when I saw everybody was already in there all looked at me. At this time, I have not receive any information on paper nor Ryan Hann and Ow Collins, both are Production Supervisors, informed me what they were discussing about.

October 30, 2013

- I went to check with Karen Phillips, Human Resources Manager, just to see how many vacation days I have left to arrange my vacations around Thanksgiving and Christmas holidays this year. She wrote on pink sticky pad⁸ that says I have earned 6½ vacation days, 2 unearned vacations days will be earned by December 31, 2013. This is the evidence that shows I have not been sick past 4 months according by their sick day policy every 4 months you earn 1 sick day pay so I knew that I didn't miss 7 or more days of unexcused absences stated in my evaluation on October 6th which I only had 4 excused absences. I have seen all of absences are excused not even one unexcused slips. That evening around 5:30 p.m., I had an head injury accident in my home. Heather had to take me to the emergency room and I received 2 staples on my right temporal side of my head⁹. I received doctor's note¹⁰ and made copy of it before I provided it to Alvin. Because I was still in pain in the morning, I had no choice but to use my sick day I earned for this reason. Heather sent text to inform Alvin what happened, she have not received any response from him so she had to forward exact text messages to two of my supervisors Ryan and Ow, in case Alvin did not reply back. She also informed Ryan and Ow that she will be calling next day at 2:30 a.m. to leave message according to the Blue Bell policy book and in our orientation, that we are to call in prior couple of hours to an hour before our schedule time. On October 31st, Heather called in to the main office for me because I still had to keep my injured head up to prevent more blood still coming out of the wound. The main office phone rang several times with no answering machine on so she texted to Alvin, Ow, and Ryan. Only Ryan and Ow responded back except Alvin.

November 1, 2013

- **No interpreter provided** for production meeting in the morning that time without any information on paper so I had no idea what it was all about.

³ Stack of Boxes.jpg

⁴ During Training.MOV

⁵ Tailgate Party.MOV

⁶ Hooka on Company Premises.jpg

⁷ Tobacco Policy.pdf

⁸ Vacation Note.jpg

⁹ Staples on Head.jpg

¹⁰ Doctor's Note, 10-30-13.jpg

November 5, 2013

- **No interpreter provided** for production meeting in the morning. Alvin provided an outline paper¹¹ to me where I sat by Denise Holden. I read them all and had some questions I was pointing number 3 under "TAPEING THE PINT BOXES" to Denise and asked her to explain what it means. She was going to clarify this for me but Alvin got on her and yelled at her not to help me anything. I yelled at Alvin that I was just asking her a question that I have right to know what it means and made expression by pointing my ears I'm deaf no interpreter here all talking but Alvin got angrier and gestured with his hand like say hey shut up and stop. So I took the paper into my pocket then sat around not being able to know what meeting had discussed about. Few minutes later, I just picked up a Avon brochure that was on our table just to keep myself occupied by looking at it then Alvin waved at me and gestured by pointing at me, yelled at me to put that down and look at the paper I have. I yelled right back to him that I was already done and you are still talking and I'm deaf I have no idea what you talking about so I'm not doing anything wrong! Alvin gave me his death stare rude attitude so I did the same thing back to him. I didn't deserve to be treated this way because I needed to know everything in details with an interpreter that he should have provided since I felt these information was important to know. When I went on to work, Denise is assigned by schedule to work with me this morning. I had to apologize to her for Alvin's rude attitude toward to her for my asking her a question to help clarify it for me. She said no problem but didn't really appreciate Alvin's rude attitude by griping her out in front of everyone. I agreed and that was very wrong. She answered all of my questions while we worked together on our line.

November 15, 2013

- **No interpreter provided** for training in the morning between 6 a.m. to 7:30 a.m. While everybody except me had been in the training during that time, Ow pulled me in the office and had me to glance at PowerPoint document of the APS showing all of the photos that were not related to my position while he was trying to find a cleaning list for me to do. I was confused and asked him if that was for me to know then he replied that is just to kill the time until interpreter shows up at 7:30 a.m. for the safety training and evacuation drills. I asked him what's going on upstairs in theater room where everybody is there about? All he replied that they were watching videos. In about 10 minutes later, he changed his mind about the cleaning list so he pulled me over to other computer and provided an outline paper¹² to me that looked the same except date on it as what was discussed in October 11th training. He just sat by me and we went through PowerPoint document of the packager training. The PowerPoint document had several missing blank titles and blank information by the photos. It wasn't very helpful for me at all like for one instance I asked him what is BOD, I was surprised that he is my supervisor that didn't know what it was abbreviated as. After we finished, everybody came down to production to clean around. Ow just told me to go with my team for now until we go back up for safety training. When they called us to come up to the theater room, two interpreters arrived for me and interpreted through with safety training and evacuation drills. We only did fire and tornado drills except ammonia drills this year was not done completely. The main problem on this day is that I was left out first hour and half without an interpreter while everybody were up in theater room in training something that could be important I need to be involved equally with everybody.

November 22, 2013

- **No interpreter provided** for 2014 Open Enrollment Benefits meeting from 12:00 p.m. to 12:47 p.m. presented by Karen Phillips. The meeting went over the benefits packets we received in our mail and more information discussed on PowerPoint on big white screen on wall in theater. Karen has spoken a lot and answered several questions from employees that I felt it was important for me to know what they were discussing about.

November 26, 2013

- **No interpreter provided** for production meeting in the morning that time without any information on paper again so I had no idea what it was all about.

¹¹ 11-5-13 Production Meeting Outline.pdf

¹² 11-15-13 Production Packager Outline.pdf

December 10, 2013

- **No interpreter provided** for majority of the company event I had to attend in the morning at National Guard Armory in Coweta. Joe Holt who is one of my supervisor has informed me in the previous day there will be an interpreter available for this event. When I arrived there at 7:20 a.m., Karen Phillips came up and informed me that an interpreter was not available due to road or sickness, etc. that TSHA apologized for this inconvenience. I figured it was fishy because I knew TSHA would not do something like that to any of their clients so I requested her that I would like to leave on first break because I was not going to sit around not being able to know what is going on. She said per Marty that I can be able to leave and still get paid full for this day. First break came up at 9:15 a.m. I was leaving on my way out but Karen caught me and informed that interpreters are on their way. Interpreters arrived at around 11 a.m. and apologized to me that they were called to come immediately in very short notice before their next assignments. After we had luncheon that ended at 12:15 p.m., interpreters had to leave earlier to their next assignments. Terri interpreted to Alvin if I can also leave and still get paid full. Alvin refused to pay full if I leave even it was only 1 hour earlier before everyone leaves for the day.

February 6, 2014

- **No interpreter provided** for counseling session given by Alvin, I refused to sign it for something I did not do. According to statement made by one of the employee, Bill Humphries stated when he was rotating the freight boxes on our line. He stated that I was angry then threw sleeves and threatened him with my two fists. I asked Alvin to explain how exactly did I throw the sleeves and fists at him because I never threw any sleeves or threatened him with any fists. Alvin shrugged his shoulders saying he didn't know and that is just what Bill said in his opinion. I described my story to Alvin that Bill was putting freights down on the floor to rotate at the same time blocking my path that I was trying to get through. I set my sleeves on the boxes in front of the ladder machine and then asked him to please make room for me to get through with the sleeves to the packagers. He moved his freight aside and made room then made hand gestures as of saying go ahead to me so I picked up my sleeves to walk through and thanked him. That was it. Alvin asked me if I did anything to him? I nodded no and said that I didn't do anything to him. He said ok then went ahead to have Donna Johnson, his office manager to sign the counseling session paper then he signed it.

I felt that I was not treated properly by how Alvin approached to me about this issue with Bill. I requested Ben Heaton, who is the supervisor in kitchen room, happened to be standing by his office to check if Alvin is in office I need to speak with him again when I was packaging. Ben checked his office came and told me he is in the office and got one of his kitchen crew to come and cover me to go see him. As I was about to open the door, Ben just came out of Alvin's office and said Alvin was not available and that he will get with you in a minute so I went back to my line and resumed on my work waiting for him to become available but he never came. He just came out of his office and walked past my line continued to avoid me because he does not want to cooperate or communicate with me anymore. Alvin should have not have jumped to conclusion and typed up counseling session paper without hearing my side of the story first. This is still the very similar way that has happened to me in the past meetings with Alvin and Marty.

February 7, 2014

- **No interpreter provided** for production meeting in the morning, I was not notified anything of this meeting to happen this day until I came up to clock in then was humiliated when I saw everybody was already in there all looked at me again. Later, I came back to my line from my morning break, Ryan pulled me into office to show me his handwritten note to explain briefly what it had been discussed in the meeting. Ow entered the room as I read it all until I noticed the signature line. As I pulled out my iPhone to type that I am not gonna sign this by myself alone because it was spoken verbally to everyone. This is not equal right. He was writing to tell me that I need to sign to show I understand just like everyone understood in the meeting then I showed him my message. Ryan got angsty and nudged the paper toward me demanding me to sign at same time Ow pointed his finger at the paper in demanding expression. I resisted and told them again that I read and understood but am still not signing if everyone didn't sign anything. That is not equal. Ryan got very angry that he slammed on the paper then crushed it into ball and threw it hard into trash bin then yelled at me to get out. I told him that he did not need to get all so mad because I have rights. Ow got up and threatened to shove me out.

February 14, 2014

- I reported an incident involved with Bill to Joe Holt little before my time to go home at 12:30. Earlier, my operator, Cody Parson had issues with Bill by trying to ask him to work out on who to take cover during his break but Bill got mad and mouthed off at him then left on to his break. Cody was left with some lid and cup boxes unopened with tapes on which was Bill's responsibility to cut tape, open to verify correct flavors and remove inserters before delivering it to the lines. I found unopened lid box that he left it on Cody that I had to set it aside over by cup boxes so I can point it out to him when he gets back from his break. I went on to fill the lids out from the other opened lid box into lidder then went on to fill up sleeves on shelves by packagers. When Bill came back from his break I simply pointed him to the unopened lid box. He got so mad that he torn the box open and threw the inserter onto the floor then set lid box in front of the lidder and walked off. When I picked more cups out of box to fill up cup dispenser, I asked Bill to please pick up the inserter he threw on the floor. He got mad again and punched the inserter then threatened pose with his fist toward to me when Tyler stood right by him. I was in fear because he struck my hip with his fist before. Three employees: Brittney, Eddie, and Tyler have witnessed his violent behavior toward to me. I saw Alvin was out in front of office door I went and asked him if I can talk to him immediately since I could not find my supervisor to report. He nodded ok then I tried to find someone to break me out to go talk to him but he seemed as he didn't want to talk to me. I finally found my supervisor, Joe, who told me that he would talk to me little before I leave. Joe stated that he will investigate this incident and ask everyone who was involved to see what happened and let me know on Monday.

February 18, 2014

- **No interpreter provided** for production meeting in the morning that time without any information on paper again so I had no idea what it was all about. Also, I see they still have not taken any disciplinary actions against Bill for threatening and violent behavior toward to me on February 14, 2014.

February 21, 2014

- Alvin did not provide formal evaluation again for the second time in a row. This time he only wrote "No wage adjustment at this time." on a yellow sticky pad without any formal evaluation paper given even after he received my formal letter on October 8, 2013.

March 20, 2014

- As everyday at work there will be 4 people on my line which one of them is the "break out" person which is Savannah Yi. My shift starts at 3:50 a.m., then there will be 2 varies employee 7:00 a.m. shift that come to work same time, then at 8:00 a.m. Savannah is the break out person that comes to work. We take breaks consecutively. That problem arise another communication issue from when I was on my second 15 minutes break. I noticed one of my teammate, Shawnda Williams who is 7:00 a.m. shift person, showed up at other table in our break room. I went to ask her what she was doing during on my break. She replied that she was on break. I told her that she was not supposed to be taking break at same time as me that she would get in trouble for doing that so she needed to go back down and wait for her turn. She said she knew but was told to go on break now. I asked her who told her to then she replied Sheila Richardson and Savannah both told her to. I told her that was wrong because we are supposed to break out one at a time then I asked her who were covering both of our spots but she didn't know who. I got concerned because I didn't want to get in trouble for their actions without my knowledge.

When my break was over, I came down and found that our line had ice cream mess all over the table and on the floor. I yelled at Sheila and Savannah, see that is what caused to mess up all this because no one was covering my spot on the floor. I feel that Savannah did not follow the proper procedures for break out. I was trying to find out what happened while I and Shawnda was on our break. Savannah paused when I was trying ask her why Shawnda was on my break. As I was putting latex gloves on, Sheila turned around and told me that it was her who told Shawnda to go on break. I became irritated that I insulted her for messing up our process and attempted to ask her to explain why she did that but Sheila got upset and ignored me and will not communicate with me about the situations. Shawnda came down from her break, I asked her to clarify what's going on then she said Alvin told her to take

break. That's different response from what she told me earlier. I asked her when did he tell her that, she replied last year in November when Alvin talked with break out group to break out in time. I asked her why didn't we start to do that in November instead of now. She replied that she didn't know why.

Sheila was still upset and continued to ignore me while I waved in her face to get her attention and tapped her shoulder asking her to please communicate with me several times. I tried to apologize her for my outburst and I wanted to understand why she started to do that.

Before I left for the day, I spoke with my supervisor, Joe Holt, to make sure he was aware of what happened during my break because I don't want to get blamed by other's actions. He asked me earlier why did Shawnda and I took break time at same time. I told him that was good question I thought the same thing. I was confused when Shawnda came up there when I was already on my break. I asked her why she was on my break now. She was told to take break now. Joe thinks they were probably trying to catch up on breaks and Alvin does not want any more overtimes. I told him oh I see ok. He said I'm good and thumbed up then I thanked him before I left.

The whole thing involved with this communication issue is what I'm still struggling with not being able to know what's going on around me with others not being open or making sure I was aware of situations.

April 1, 2014

- On my way to breakroom for my lunch break, I noticed one of new external employee¹³ on poster showing his position title as Freight Puller who Alvin has hired on March 31, 2014. Back in October 6, 2013, Marty and Alvin has failed on fulfilling their promise fulfilling their promises to show exactly what they wanted me to do in order to give my original job back. Instead, they gave my position to Amy Boggs who threatened me with her knife. She asked it on purpose and continued to harass me but I ignored her she got tired of it that she wanted to go back to packaging after few months later. I asked them again to please give me my job back and Alvin responded that he did not have any opening available for this position at this time. They passed my position right away to Bill Humphries who struck my hip. Both of them did not have to do some of duties that I had to do. It's obviously insulting of their giving my position to specific persons who threatened me which they did not do anything according to the policy then continued to add new Freight Operator from external instead of giving my job back to me.

April 2, 2014

- No interpreter provided** for production meeting in the morning. Ow provided an agenda with scribbles¹⁴ by Alvin to me that was a copy from original agenda¹⁵ posted on the bulletin board in hallway between production and processing department. On April 4th, I noticed the original agenda has been replaced with updated agenda¹⁶ creates confusion with insufficient details.

April 25, 2014

- No interpreter provided** for the meeting with Marty and Alvin in Alvin's office, I requested them to provide an interpreter more than 2 times. They said fine but threatened to send me home immediately and not to come back to work until they get an interpreter to come which may be in few days or more. I nodded and said yes that's fine but Marty tapped on paper while Alvin pointed to paper to continue on writing on the paper about an incident happened on April 22nd reported by team on my line that I threw the operator paperwork on clipboard in trash. I refused to continue on without interpreter then they threatened by giving me disciplinary actions in details when interpreter gets here so I went on to admit that I did this because I thought all of us were joking. One of my teammate, Sheila Richardson, took the paperwork from our operator, Cody Parson, and started to pretend she was going to toss it into trash because she got tired of signing the allergen sheet whenever we are running ice creams with allergens in it. I grabbed it and did the same thing but she nodded and grinned that indicated me to do it so I threw it in trash for her then we all laughed then I went to pick it up out of trash right away and told them

¹³ External Employee.jpg

¹⁴ Agenda with Scribbles.jpg

¹⁵ Original Agenda.jpg

¹⁶ Updated Agenda.jpg

better not do that. Marty said that I refused to pick it out of trash until Cody went to ask one of my supervisor, Joe Holt, to come over that was when I went to pick it up. I told him that was not true because Cody was still standing by us to have each of us sign the paperwork. I picked the paperwork out of trash right away and gave it back to Cody still standing by us then Joe just came by our line and saw us laughing. Marty said they were not joking about it. I reminded him that I'm deaf that how I can tell from my perspective with all of us laughing indicated it was all as joke. I also admitted this probably was not smart thing to do that was why I picked it up right away and told them better not to do that. I felt that my team were not telling whole picture of what really happened to Marty and Alvin that is why I suggested they should set cameras around the production area that would have shown the truth.

Marty stated in light of this evidences they have received from packagers and my own admission that they felt that he has to give me disciplinary actions by terminating me and a suspension. I was confused what he meant by that even after they threatened me already at beginning of the meeting. He asked me if I still wanted to have an interpreter here before he provides details of disciplinary actions. I told him yes I did again and turned pages back and pointed my two previous answers. I felt that all on my team involved in this should be disciplined not just only me because all of us were laughing with the joke. He went on talking about SOP and GMP and we are in food manufacturing that paperwork is retained as records for 3 years. Throwing paperwork in trash could get damaged and/or soiled. I told him that was exact reason why I picked it up right away. I did not intend to toss it in trash until Sheila suggested me to do it for her. I asked him what SOP was and kept asking him to please clarify what he meant by terminating me and a suspension. He only spelled out "Safety Operating Practices" without describing this definition then realized that he made mistake by meaning to say not terminating me and giving the suspension. I told him that I will accept my suspension for today and I apologized then I got on him by pointing this out as perfect example of what I was talking about our miscommunication has occurred similar in the past that I have requested for an interpreter many times. Had an interpreter been provided then we would not have these issues continued on.

He was still missing my points by telling me by throwing paperwork was not miscommunication issue and that I was trained and knew what to do, and that I was not meeting requirements as every employees have and I refused to make necessary changes. I fired back at him by saying that was not the point I was talking about. I never refuse to make changes because I had no priorities or informations and was not properly trained without an interpreter provided. I reminded him that last time in his office I attempted to try have him cooperate with me by asking for what's his expectation then he got up and walked off with Alvin. I worked hardest I could do by copying how other works and tried to figure what more they wanted from me. I felt that they were so busy trying to find something else to mount on me to try get rid of me instead of helping me to improve. They chose to believe others as hearsay than hearing my truth. He did not respond to that instead he started to instruct me on an arrangement to have Alvin escort me out of the plant today and not to come back to the plant until I report to work on May 5th. I told them it was not right because I only agreed to accept suspension for today. That is over 5 days due to that I was scheduled to work on the next day. This should have even counted with today meaning I should be back to work on April 30th but Marty disagreed because Saturday was not considered as normal work day. I argued with them that it was not fair that I'm suspended that excessively over a little thing. He said that they made this decision based on the past issues that was why he felt that I should receive that multiple days. I told him that he should not have based this incident relating with the past because I got suspended for something I did not do.

They assumed that I have not been happy then it's up to my decision whether I want to be here or not. I stated that I am not quitter and I am fighting for my innocence. Yes, I am not happy here at all because of how I have been treated bad from them and that I have no respect from them anymore. I am tired of being treated this way that I requested to go home now and end our conversation.

On my way out to go home, I told them that I don't understand why I received this excessive suspension over a little thing that I apologized for comparing to an incident that happened on April 23rd with a filled half gallon dutch chocolate ice cream were thrown into another line's ladder by someone that did not receive any suspension at all. Marty accused that I knew something as if I did this then I got offended

and snapped at him to stop trying to accuse me! I had no idea how it happened and that was definitely not my problem. It was not fair to be suspended over a joke comparing to very serious consequences that could potentially cause the customer injury or death by allergens by reckless employee who did this.

May 9, 2014

- Before I leave for the day, Alvin pulled me in his office and tried to have me sign the formal final warning paper for the incident that happened on April 22nd. I refused to sign it because **no interpreter were provided**, Marty and Alvin never told me that I would receive the formal final warning paper prior the meeting that occurred on April 25th and I read the statement showing completely different from what we discussed in our meeting on April 25th. I never knew or was told this meeting was considered as counseling session before we started. Also, they are trying to connect this incident with the past separate incidents for something I still did not do, it was their own manipulative tactics of accelerating it into final warning by trying to pressure me to quit or get rid of me faster. I can see that they are continuing to harass me after I have asked them to stop it.

July 1, 2014

- Almost an hour before I leave for the day, Alvin pulled me in his office with Gerald and they tried to have me sign another formal final warning paper for the incident that happened on June 28th. Gerald was the one who pulled me in his office on June 28th to inform me about an observation he wanted to let me know I need to replace my cap because I made "cow" and "girl" logo into "horse" and "boy". I initially refused to replace at that time because I didn't care cause I didn't pay for my own cap that I made for fun last year and it was already old about time for me to get new one anyway. I never knew it was against uniform policy by altering the logo. The logo that I "alternated" on my cap had been over a year. Had I knew it was I would not have done that. Alvin intervened into our conversation and threatened me to go home if I continued to refuse. I yelled while pointing at him "You want me to go home? Go ahead! I don't care! You better stop harassing me!" Alvin walked away to his office then Gerald instructed me where to get another new cap. Alvin came back out of his office and tried to stop me as I walked away and ignored him on my way to get new cap. After I replaced my cap, I came down on my way back to work and asked Gerald if he was happy now seeing me wearing new cap. He nodded yes and thumbed up to me. This was an isolated incident that I assumed it has been resolved and moved on. Obviously, Alvin came back out of office and stared at me as he was trying to intimidate me while I was working. Alvin and Marty are still so obsessed with trying to find anything they can continue to build up more warnings I still continued to refuse to sign because **interpreter were not provided** and they continued to add this incident with the past separate incidents for something I still did not do, this time I noticed on the list of incidents were altered again to include 3 "Job Performances" that I was not aware of. This confirmed my suspicions that I was only one who never gotten any raises or evaluations while everybody already got their raises and evaluations. At end of this meeting, I got up and tried to take a picture of the warning paper as an evidence to show my attorney but he grabbed the paper away when I was about to take the picture of it, so I was being humbled and walked out of his office. When I got home, I quickly looked up the Blue Bell Policy book under Uniform section where it only says "There will be no color or design changes made to this dress code unless approved by Management." It didn't say that I can't "draw", "change", or "color" on it.

Several of these times in the past with not providing an interpreter has already happened before the recent situations occurred:

- **No interpreter provided** for 1st interview with Karen Phillips on February 9, 2012.
- **No interpreter provided** for 2nd interview with Alvin Bailey and Marty Kilgore on February 12, 2012.
- **No interpreter and training materials provided** for any of my trainings for all of these positions: Freight Operator, Fruit Feeder, and Packager. Patricia trained me for Freight Operator without an interpreter. As time goes on, I've learned by watching how Fruit Feeder and Packager performed and I was trained briefly by Patricia without an interpreter.

- **No interpreter provided** for me and Heather in all production meetings in morning.
- **No interpreter provided** for all of meetings with Alvin Bailey and Marty Kilgore.

No due process: Verbal Warnings and Written Warnings

I have not receive any due process. I was unaware of any counseling sessions and verbal warnings before I was given written warnings that was when I noticed these previous warnings because all of our conversations were written on papers **without an interpreter provided**. I have received too many warnings from Marty that were not followed by policy guidelines is one of reasons why I refused to sign because of all were based of false accusations. I have tried to request Marty to provide an interpreter several times to make sure our communication is clear in our discussion but he insisted to write on papers or I go home. Marty never emphasized any of our discussion as "counseling sessions" or "verbal warning". Had I knew of that I would've been very concerned.

I was shocked to learn Marty accused me of pushing Denise Holden who was one of the packager that worked with me. I wouldn't do something stupid like that ever in a workplace especially pushing a sweet and nice short lady I enjoyed working with. If I did, it could've caused her to fall or something serious. Heather was in my area watching me all day she never seen me push her or anyone else. Denise should have confronted one of us then I would've apologized to her and made sure she was ok. Marty was vague of how I pushed Denise when I asked him twice to explain specific how did I push her. In one of the meeting in Marty's office, he displayed by pushing with one hand then in other meeting in Alvin's office, he displayed by pushing with both hands in violent manner. He displayed in two different versions of how I pushed so that was why I still had no idea of how it happened exactly.

Unequal Treatment

I felt that I was being treated differently with Amy Boggs, Bill Humphries, and James Garner. All of these employees involved weren't suspended or terminated at all for their own actions but I got suspended for a week for pushing an employee which never happened was unequal under their policy guidelines.

April 4-15, 2013 - Amy Boggs

- Amy pulled up knife¹⁷ toward me and attempted vehicular assault by her gold grand canyon minivan which was very serious offense. Knife and vehicle is a "weapon" that can cause very serious injury risk or death comparing to a "push" that never happened which I got suspended for one week by Marty based on hearsay witnesses who may have had plots made with Amy beforehand. Amy never got suspended for any of these serious offenses. She also has been harassing and trying to harm me in any way. I went ahead and filed police report¹⁸ on her to Broken Arrow Police Department. Marty never take any appropriate action against her under violence policy for bullying, harassment and threatening with weapon. According to Workplace Violence Prevention¹⁹ and Discharge Policy²⁰, she should have been terminated for these kind of multiple behaviors already.

May 31, 2013 - Bill Humphries

- I was packing on cup dispenser side at 1st half gallon line with Maury Cebreo, packager, was packing on ladder side. At around 6 a.m., the conveyor belt stopped and it was getting full with ice cream in sleeves and we had no where to put packaged sleeves at so I had to put it on the table and it was piling up. I got off from the stool and placed it under sleeves shelf then kept packing and setting more on table then some on conveyor belt when more space were available. Bill Humphries who was an operator that got so angry because we piled packaged ice creams on the table and conveyor belt we couldn't continue piling on conveyor belt because it was all clogged already. The ice creams on the table fell and struck him when he was bending down for something that is when he got out of control and struck me while I was packing. He yelled at me something I couldn't understand, he thought I struck him which I did not. That's when he struck my left hip with his right fist so hard that injured my joint in my left hip left with 2x3

¹⁷ Knife.jpg

¹⁸ Broken Arrow Police Report.pdf

¹⁹ Workplace Violence Prevention.pdf

²⁰ Discharge Policy.pdf

oval shaped bruise²¹. His attitude and behavior would have be prevented if he had checked the surroundings and what struck him or ask before he struck me. He can't handle the stress when ice cream is not running smooth.

When Alvin took me to St. John hospital in Broken Arrow, OK to have my hip looked at, the doctor noticed the bruise mark and asked me if I knew about this. I was shocked to see it was that bad so he was concerned after I described what happened. He asked me if I wanted to press charge but I was not sure if it'll do anything since Blue Bell didn't do anything about incident with Amy. While I was waiting in room to have my hip x-rayed, Alvin came in and he was telling me not to do anything about it until he investigate the incident first or I will be in trouble. Marty tried to twist the incident to place blames on me instead of Bill such as especially by accusing me of throwing the stool when it happened because Bill is one of his church friend. I asked him to display how I threw the stool but he continued to say that I did so he didn't comply to my question. I knew this was not true because I wouldn't act that stupid to throw a stool in front of many employees around.

August 29, 2013 - James Garner

- James used middle finger knuckle struck twice right on back of my spine very hard when I was packing. I didn't appreciate this kind of way of telling me he is breaking me out to go on my morning break. I asked him why he have to hit me like that for but he didn't respond to my question at all so I reported this incident. Alvin called James into his office then called me in to join with them and showed me James' apology comments on paper. I accepted his apology and told him just to tap on my shoulder or something to get my attention.

Miscommunication

There was miscommunication issue from me leaving my line for the day too early without anyone being notified that caused Marty to pull me in Alvin's office **without an interpreter provided**. I always know when to leave after my replacement person gets on line everyday up to the particular day. Candy Cook was one of the packager that came in from her break to replace me miscommunicated by her waving "bye" or "not yet" because both signs are very identical. I think she probably wasn't ready for me to leave, if she wasn't ready for me to leave she should have chased to grab me and said wait and I would have stayed until she was ready. I still didn't understand why on this particular day had gone wrong by people telling Marty differently on how I left earlier. As best of my knowledge still stand the same what I told Marty, Serena Balentine was the other packager on my line left for the day when John Makinson was the other packager on my line replaced her on lidder side while I was still packing on cup dispenser side until Candy came in to replace me then she waved "bye" just like anyone else did normally that indicated me it is my time to leave for the day everyday. Talisha Tygart was the other packager on the floor when they were rotating at same time as I left.

After I was pulled in Alvin's office regarding to this situation, I spoke with Talisha about this issue on the next day. I verified with Talisha that she stated Candy waved bye to me and it was not my fault and that was Candy's fault because she was coming in late from her break during time of rotation, it was all miscommunication and no big deal but I told her it was big deal because I was very concerned about it because I didn't like getting in trouble for something I was unaware of what happened. After this incident has happened, I started making sure everyone are replaced and everything is all good before I leave everyday from now on. I was not even sure if I am supposed to notify supervisor that I am leaving for the day, how can I when most of the supervisor is not always on the floor, they are either near or away from the line or in office.

I feel this was unnecessary to receive written warning I refused to sign because I thought we got this isolated incident solved immediately because Marty said that he gave me benefits of doubt that time. I still don't understand why Marty and Alvin has been harassing me on anything they can try to find on me constantly. Everybody was very concerned of me every time I come out of office because they told me they saw me pulled in office so many times and that I've not been treated right.

²¹ Bruise on Hip.jpg

Conclusion

I feel I have not been treated fairly at this place. I was so frustrated and expressed my distress to my family from time to time on how Blue Bell treated me. Obviously, the situation with many meetings made me feel abused and not trained properly without an interpreter. They never offered an interpreter for job trainings except for orientation. They didn't seem to care or have consideration of me as a deaf person. They did not make enough effort to make sure I was trained well or informed of everything completely. They left me out several times and did not provide an interpreter for all of the meetings. There were so many things that were not normal compared to my previous employers. Interpreters were automatically provided for all trainings, meetings, or events. I didn't even ask for one. They understood how important it was to have me involved and equal to everybody else.

There are no fire alarm, ammonia or tornado warning strobe alerts in entire building. Blue Bell was going to do it but decided to do buddy system instead. Drill was only done one time since last year but it was not very effective at all.

A just reason to move me from Freight Operator to Packager would be if I did sloppy work, or didn't do what I was told to do, or didn't know how to do the work. That would make me not qualified if I couldn't do the work. I strongly feel discriminated against by all these situations that happened. I wanted to cover it all with you to the best of my knowledge I experienced over a year of suffering. Can you please see if I have a case against Blue Bell Creameries, Inc. for discrimination? Thank you for your time and consideration in taking my case.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rusty Mackey', with a stylized, cursive script.

Rusty Mackey

Originally filed with Department of Justice and Office for Civil Rights: November 26, 2013

Updated: December 10, 2013

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Updated: March 20, 2014

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Updated: April 4, 2014

Updated: April 25, 2014

Updated: May 9, 2014

Updated: July 1, 2014

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Russell (Rusty) E. MacKey**
11274 South 274th East Ave.
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From: **Oklahoma City Area Office**
215 Dean A. McGee Avenue
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On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

564-2014-00499

K. Kelly,
Investigator

(405) 231-4353

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

K. Kelly

Holly Waldron Cole,
Area Office Director

June 3, 2014

(Date Mailed)

Enclosures(s)

cc: **Newton O'Connor**
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